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No. 03-287

In the
Supreme Court of the United States

REGINALD WILKINSON,
Director, et al.,
Petitioners,

v.

WILLIAM DWIGHT DOTSON,
et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE STATES OF ALABAMA, ALASKA, ARKANSAS, DELAWARE, HAWAII, ILLINOIS, KANSAS, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, OREGON, PENNSYLVANIA, SOUTH DAKOTA, UTAH, AND VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Does *Heck v. Humphrey* permit a prisoner to bring a § 1983 action claiming that his parole proceedings violate due process, even though success on the merits of this claim would result only in a new parole hearing and would not necessarily guarantee earlier release from prison?

2. Does a federal court judgment ordering a new parole hearing "necessarily imply the invalidity of" the decision at the previous parole hearing, for purposes of *Heck v. Humphrey*?

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BRIEF OF AMICI CURIAE

The States of Alabama, Alaska, Arkansas, Delaware, Hawaii, Illinois, Kansas, Mississippi, Missouri, Nebraska, Nevada, Oregon, Pennsylvania, South Dakota, Utah, and Virginia submit this brief as amici curiae, pursuant to Supreme Court Rule 37.4, in support of the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit filed in this case by petitioners Reginald Wilkinson and Margarette Ghee.

INTEREST OF AMICI CURIAE

In *Heck v. Humphrey*,[1] this Court adopted the "favorable termination" requirement for § 1983 actions. "[W]hen a state prisoner seeks damages in a § 1983 suit," this Court held, "the district court must consider whether a judgment in favor of the plaintiff *would necessarily imply the invalidity of his conviction or sentence.*[2] "[I]f it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated."[3]

Subsequently, in *Edwards v. Balisok*,[4] this Court held that the favorable termination requirement of *Heck* barred a state prisoner's § 1983 claim that a disciplinary hearing violated due process. Even though the prisoner was not challenging the outcome of the hearing — just the procedures used to reach it — the

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[1] 512 U.S. 477 (1994).

[2] *Id.* at 487 (emphasis added).

[3] *Id.*

[4] 520 U.S. 641 (1997).

Court held that "the nature of the challenge to the procedures [were] such as necessarily to imply the invalidity of the judgment."[5]

The States who file this amicus brief have a keen interest in clarifying the fields of application of both *Heck v. Humphrey* and *Edwards v. Balisok*. The States stand at the increasingly busy "intersection of the two most fertile sources of federal-court prisoner litigation — the Civil Rights Act of 1871 ... and the federal habeas corpus statute."[6] The amici States have each been affected by *Heck* and *Balisok* and have each struggled with lingering questions about the extent to which these decisions may bar inmate lawsuits brought under 42 U.S.C. § 1983. Amici ask that this Court grant certiorari in this case to resolve these issues concerning the proper application of *Heck* and *Balisok*.

STATEMENT OF THE CASE

1. Petitioner William Dwight Dotson is serving a life sentence in Ohio prison for aggravated murder. His first parole hearing was held in 1995, but he was denied parole. At the time, his next parole hearing was scheduled for 2005, but in 1998, the Ohio Adult Parole Authority revised its guidelines in such a manner that Dotson was not likely to be paroled until 2007 at the earliest.

Dotson sued in federal district court under § 1983, claiming that the Parole Board had violated his rights by applying the new guidelines to him. Dotson sought a declaration that he was entitled to be processed under the old guidelines. He also sought an injunction

[5] *Id.* at 645.

[6] *Heck*, 512 U.S. at 480.

requiring the Parole Board to give him a "prompt and immediate parole hearing" so that he could be re-evaluated under the old guidelines.

2. Petitioner Rogerico J. Johnson is serving a 10-30 year sentence in Ohio prison for aggravated robbery. His first parole hearing was held in April 1999. He, too, was denied parole. Johnson claims that the hearing violated his rights in several ways. He claims that just one Parole Board member held the hearing, while Ohio law requires that both a Board member and a Parole Board hearing officer conduct a hearing. He also claims that he was not allowed to speak on his own behalf. Finally, he claims that the Board member based the decision to deny him parole on crimes for which he was never charged or convicted.

Like Dotson, Johnson sued in federal district court under § 1983. He seeks to set aside the decision denying him parole and to have an immediate, new hearing.

3. In both cases, the district courts dismissed the § 1983 actions under the favorable termination requirement of *Heck v. Humphrey*. The prisoners then appealed. Their appeals were ultimately consolidated and heard en banc by the United States Court of Appeals for the Sixth Circuit.[7] The Sixth Circuit reversed.

The majority of the en banc panel reasoned that the most each prisoner would gain by prevailing on his § 1983 lawsuit was a new hearing, and not necessarily an earlier release.[8] A § 1983 claim "necessarily implies

[7] *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003) (en banc).

[8] *Id.* at 470.

the invalidity of a prisoner's conviction or sentence," the court held, only if it "will inevitably or automatically result in an earlier release."[9] The dissent, citing *Balisok*, maintained that *Heck* barred all § 1983 claims that would "imply the invalidity of any state criminal judgments relating to the length of a prisoner's incarceration," whether or not a favorable resolution of the claim would itself entitle the prisoner to an earlier release.[10]

REASONS FOR GRANTING THE WRIT

I. *Heck v. Humphrey* and *Edwards v. Balisok* Have Engendered Significant Confusion in the Lower Federal Courts, Which Can Be Rectified Only By This Court on Certiorari Review.

Though *Heck v. Humphrey* was doubtless intended to clarify the interplay between 42 U.S.C. § 1983 and the federal habeas statute, the ensuing nine years have shown that the "necessarily implies" language of *Heck*[11] may have raised more questions than it answered. Similarly, the extension of the *Heck* doctrine in *Balisok*, though beneficial to the States in many ways, has given rise to its own controversies. The federal courts are in conflict about how *Heck* and *Balisok* apply to prisoner challenges to parole procedures. The existence of a circuit split is inarguable; there appear even to be splits among different panels within the same circuits.[12] In addition, the federal courts are in

[9] *Id.* at 471.

[10] *Id.* at 473.

[11] *Id.*

[12] *See* Pet. 9-15, 26-28.

conflict about how *Heck* and *Balisok* apply to several other issues of importance to the States. These conflicts cry out for doctrinal resolution that can only be had through certiorari review.

A. The Fourth and Eleventh Circuits have issued conflicting opinions regarding whether post-conviction § 1983 actions seeking DNA evidence for testing are barred by the favorable termination requirement of *Heck*.

The permutations of confusion engendered by *Heck* and *Balisok* are manifold. The State of Alabama has recently struggled with one of these permutations — whether § 1983 may be used by inmates as a vehicle to obtain DNA testing. In *Bradley v. Pryor*,[13] the Eleventh Circuit refused to dismiss a death row inmate's § 1983 claim for DNA evidence, holding that a judgment in favor of the inmate would not "'necessarily imply the invalidity of his conviction or sentence.'"[14] Even still, the panel in *Bradley* expressed some equivocation in its decision. Judge Birch, in a special concurrence, stated, "I concur *dubitante*."[15] He opined that the judgment of the district court was likely due to be affirmed on a separate ground — failure to state a claim — though he believed a remand was required to properly treat that issue.[16] Chief Judge Edmondson clearly ascribed significance to the fact that the plaintiff, who had been convicted of capital murder, had not asked a federal court to stay his impending

[13] 305 F.3d 1287, 1290-91 (11th Cir. 2002).

[14] *Id.* at 1291 (quoting *Heck*, 512 U.S. at 487).

[15] *Id.* (Birch, J., specially concurring).

[16] *Id.*

execution.[17] It is unclear how this factor weighed in the *Heck* calculus, if at all, in *Bradley*.

The Eleventh Circuit decided *Bradley* with full knowledge of the contrary holding of the Fourth Circuit in *Harvey v. Horan*.[18] In that case, a divided panel determined that a prisoner's § 1983 suit seeking DNA testing was precluded by *Heck* and that the action could proceed, if at all, only as a habeas petition. The *Harvey* majority saw the claim of the plaintiff in that case for what it truly was: an attempt to impugn a criminal conviction under the auspices of a § 1983 civil action. The Fourth Circuit rejected this stratagem, repeating the admonition of this Court in *Heck* "that civil tort actions are simply 'not appropriate vehicles for challenging the validity of outstanding criminal judgments.'" [19] That holding notwithstanding, the Eleventh Circuit in *Bradley* was more persuaded by the minority view expressed in *Harvey*, which rejected the majority's interpretation of *Heck*.[20]

The claims presented in *Bradley* and *Harvey* were virtually identical. In those cases, both plaintiffs sought DNA evidence that held no value to them other than the possibility of exonerating them of crimes for which they were long ago convicted. The Fourth Circuit rejected this ploy under the authority of *Heck*.

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[17] *Id.* at 1291 (Edmondson, C.J., specially concurring).

[18] 278 F.3d 370 (4th Cir. 2002).

[19] *Id.* at 374-75 (quoting *Heck*, 512 U.S. at 484). *See also Kutzner v. Montgomery County*, 303 F.3d 339 (5th Cir. 2002) (holding the same).

[20] 305 F.3d at 1290 (agreeing with the analysis of Judge King in *Harvey*, 278 F.3d at 382-83 (King, J., concurring in part and concurring in the judgment).

In contrast, the Eleventh Circuit, perceiving a distinction between obtaining DNA evidence and actually putting it to use, interpreted *Heck* to allow a civil lawsuit whose thinly veiled purpose was to find a way to undermine the plaintiff's criminal conviction.

The fact that two federal circuits have reached polar opposite results, each after analyzing the operative scope of *Heck*, shows that the *Heck* favorable termination requirement may be unworkable or, at the very least, in need of clarification or modification by this Court. In particular, the "necessarily implies" language of *Heck*[21] — the flashpoint of controversy surrounding the application of *Heck* and *Balisok* — may require reexamination or reformulation.

B. The Seventh and Eleventh Circuits have issued conflicting opinions regarding whether prisoners' § 1983 claims alleging extradition improprieties are barred by *Heck*.

Another circuit split exists concerning whether prisoners can maintain causes of action under § 1983 based on alleged improprieties in the extradition process. In *Knowlin v. Pataki*,[22] the Seventh Circuit upheld the dismissal of just such a claim, where the order of the lower court was premised on *Heck*. The *Knowlin* court held that, in order to state a cause of action, the plaintiff in that case would necessarily have had to prove damages stemming from something other than his extradition from one state to another. To do so, the court held, the plaintiff had to demonstrate the invalidity of the parole revocation that led to his

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[21] 512 U.S. at 487.

[22] 207 F.3d 907 (7th Cir. 2000).

extradition. Such proof, however, would run afoul of *Heck*, and the plaintiff's claim was consequently barred.[23] In unanimously upholding the dismissal order of the district court, moreover, the Seventh Circuit followed its holding in *Antonelli v. Foster*,[24] which likewise affirmed the dismissal of an extradition-based § 1983 claim on the authority of *Heck*.

Once again, however, the Eleventh Circuit has reached a different conclusion. In *Harden v. Pataki*[25], the Eleventh Circuit ruled that a prisoner's § 1983 suit challenging the manner of his extradition was not barred by *Heck*. Rejecting the reasoning of the Seventh Circuit in *Knowlin*, the Eleventh Circuit saw no means by which the plaintiff's § 1983 claims might vitiate his criminal conviction.[26] The court found it "implausible" that the plaintiff's claims would necessarily imply the invalidity of the extradition decision itself.[27]

Just as with the circuit split regarding DNA testing, these divergent opinions concerning the application of *Heck* to extradition-based § 1983 claims raise serious concerns and point up the need for greater clarity on this issue.

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[23] *Id.* at 909.

[24] 104 F.3d 899 (7th Cir. 1997).

[25] 320 F.3d 1289 (11th Cir. 2003).

[26] *Id.* at 1296, 1299 (describing the reasoning in *Knowlin* as "syllogistic" and "fundamentally flawed").

[27] *Id.* at 1297 n. 10.

C. Several federal circuits are split on whether Fourth Amendment unreasonable search and seizure claims asserted under § 1983 are barred by *Heck*.

The "necessarily implies" language of *Heck* — and particularly footnote seven[28] — has also produced a difference of opinion between several of the circuits on Fourth Amendment § 1983 claims. The decision of the Ninth Circuit in *Harvey v. Waldron*[29] aptly delineates the positions of the circuit courts on this issue. Ultimately, the Ninth Circuit sided with the Second and Sixth Circuits and applied *Heck* to a § 1983 claim alleging a Fourth Amendment violation. In doing so, the *Harvey* court rejected the dissimilar approach of the Seventh, Eighth, Tenth, and Eleventh Circuits, which had each recognized a general exception to the *Heck* rule for Fourth Amendment unreasonable search and seizure claims.[30]

The circuit split elucidated in *Harvey* only further illustrates the confusion engendered by *Heck* and its progeny. That a mere footnote in *Heck* could spawn two separate approaches to the same issue in seven of the federal circuits only demonstrates the need for greater clarity in this area. This case, especially when considered in conjunction with *Muhammad v. Close*,[31] presents an ideal platform for providing this much-needed clarity. This Court should, therefore, grant certiorari.

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[28] 512 U.S. at 487 n. 7.

[29] 210 F.3d 1008 (9th Cir. 2000).

[30] *Id.* at 1015-16.

[31] No. 02-9065, *cert. granted* June 16, 2003.

II. The *Heck* Rule Should Be Recast to Better Insulate State-Court Judgments and Administrative Decisions from Collateral Attacks Brought Under the Auspices of § 1983.

If certiorari is granted in this case, the amici States will argue for a more liberal application of *Heck* that would bar any § 1983 claims having no other realistic or practical purpose than to attack the validity of a state-court judgment or administrative decision. Adopting such a standard would do away with the unduly restrictive "necessarily implies" language of *Heck*, thereby ameliorating much of the confusion wrought by that decision. Effecting this change in the *Heck* rule will do much more than shield the States from the burdens occasioned by defending § 1983 actions. Adopting a more liberal application of *Heck* will also better fulfill the objectives underlying the *Heck* decision itself.

In *Heck*, this Court repeatedly expressed the importance of avoiding scenarios in which criminal judgments could be impugned by subsequent civil actions. This Court invoked "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," stating that it "has long expressed ... concerns for finality and consistency and has generally declined to expand opportunities for collateral attack." [32] Yet, the "necessarily implies" standard employed in *Heck*, at least as it has been interpreted by some of the federal circuit courts, fails to shield state court convictions adequately. The same is true, post-*Balisok*, of state administrative decisions.

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[32] 512 U.S. at 484-85.

The decision of the Eleventh Circuit in *Bradley* is a perfect illustration of this point. Though it could hardly be argued the plaintiff in that case sought DNA testing for any purpose other that to eventually attack his criminal conviction, his § 1983 lawsuit was allowed to proceed. The Eleventh Circuit, by its rigid application of *Heck*'s "necessarily implies" language, considered only the immediate impact of Bradley's § 1983 claim — the post-conviction production of evidence — and not the downstream consequences of its ruling. In doing so, the *Bradley* court missed the forest for the trees. It is evident, as the Fourth Circuit appreciated in *Harvey*, that a § 1983 claim of this type, if not a direct assault, was at least a flanking maneuver to attack the validity of a state-court conviction. Such a lawsuit is repugnant to the principles underscored in *Heck*. Nonetheless, the Eleventh Circuit purported to follow *Heck* in allowing Bradley's claim to proceed under § 1983.

The same situation has unfolded in many other circuit court decisions, as outlined above. It appears some of the lower federal courts, in attempting to apply *Heck* and *Balisok*, have focused primarily on the "necessarily" aspect of the rule while neglecting the principles that undergird *Heck*. Thus, the "necessarily implies" aspect of *Heck*, with the benefit of hindsight, may have been an unfortunate choice of words. Though grounded in firm principles, this language has produced conflict amid the circuits with attendant inconsistent decisions that are not in step with the spirit of *Heck*.

The adoption of a more liberal *Heck* standard that looks to the practical effect as well as the necessary outgrowth of prisoners' § 1983 claims, however, would cure the deficiencies in the current state of the law.

For this reason, amici urge this Court to grant certiorari in this case and, furthermore, to consider reformulating the *Heck* rule.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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